

Joseph DiBella  
Assistant General Counsel



1320 North Courthouse Road  
Eighth Floor  
Arlington, VA 22201  
Phone 703 974-6350  
Fax 703 974-0259  
joseph.dibella@verizon.com

*Ex Parte*

May 12, 2003

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: WC Docket No. 02-112, Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; CC Docket No. 96-149, Petition of Verizon for Forbearance from the Prohibition of Sharing Operating, Installation, and Maintenance Functions Under Section 53.203(a)(2) of the Commission's Rules**

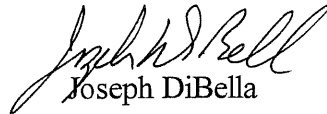
Dear Ms. Dortch:

Verizon hereby files, pursuant to a request for confidential treatment, the historic data underlying its study of the costs of complying with the Commission's section 272 separate affiliate rules and, in particular, the prohibition on sharing operating, installation, and maintenance ("OI&M") functions between a Bell Operating Company ("BOC") and a section 272 affiliate. As demonstrated in Verizon's petition and prior comments, any regulatory benefit that might have been attributed to the OI&M restrictions already may be achieved as a result of other regulatory obligations. Therefore, any costs of compliance outweigh the benefits. Here, where the costs are substantial, the balance is even more clear. Thus, the more detailed estimates provided herein provide supplemental proof of the disproportionate balance.

The information for which confidential treatment is requested has been marked as "proprietary." The data show the actual expenses incurred by Verizon's section 272 affiliate and the percentages of those expenses that were incurred solely to comply with the section 272 restrictions. This follows the methodology that Verizon described in its September 24, 2002 Reply Comments in Docket 96-149. The budget data that Verizon

previously used to estimate these costs have been updated to include year 2002 actuals and other minor corrections to the historic data. The updated information show that Verizon has incurred approximately \$320 million in expenses to comply with the section 272 separate affiliate requirements from 1998 through 2002 (compared to the \$314 million estimate in the previous study) and, in particular, that it has spent \$212 million (previously, \$197 million) to comply with the OI&M restriction.

Sincerely



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Attachments

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Dear Ms. Dortch:

Pursuant to the Commission's rules related to the Freedom of Information Act, 47 C.F.R. §§ 0.457 and 0.459, the Verizon Telephone Companies ("Verizon") hereby submits this request for confidential treatment of the attached data, which provides the historic expense data that Verizon used to calculate the burdens of complying with the section 272 separate affiliate rules and, in particular, the prohibition on sharing operating, installation, and maintenance functions between a Bell Operating Company ("BOC") and a section 272 affiliate. The information for which protection is requested has been marked as "proprietary." Verizon requests that these data be withheld from public release.

The attached document for which confidential treatment is being requested contains commercially sensitive information relating to the amounts spent by Verizon's section 272 affiliate to provide interLATA communications services. These data constitute "trade secrets and commercial or financial information" that are "confidential" and exempt from disclosure under the Exemption 4 of the Freedom of Information Act

("FOIA"), 5 U.S.C. § 552(b)(4). Verizon submits the following information as required by section 0.459(b) of the Commission's rules in support of its request.

**(1) Identification of the specific information for which confidential treatment is sought.**

The information is contained in the attached spreadsheet and is marked as "proprietary." The spreadsheet includes itemized expense data of Verizon's section 272 affiliate for the years 1998 through 2002.

**(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstance giving rise to the submission.**

This information is being submitted this date in an *ex parte* filing by Verizon in WC Docket No. 02-112 and CC Docket No. 96-149.

**(3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.**

The information for which Verizon seeks confidential treatment consists of data concerning the amounts spent by Verizon's section 272 affiliate to provide facilities-based long distance network services. This is commercially sensitive information that telecommunications carriers normally keep confidential. Verizon keeps these data confidential and does not voluntarily disclose the information outside the company unless compelled by law or subject to nondisclosure agreements.

**(4) Explanation of the degree to which the information concerns a service that is subject to competition.**

The information concerns Verizon's costs to provide competitive long distance services. The long distance market is highly competitive and is served by numerous carriers, including large incumbent facilities-based carriers such as AT&T, WorldCom, and Sprint. Verizon faces competition from these carriers as well as from other carriers such as cable companies and wireless carriers, who provide long distance services together with their own local services.

**(5) Explanation of how disclosure of the information could result in substantial competitive harm.**

Disclosure of these data would subject Verizon to substantial competitive harm. The data show how much Verizon spent to develop its long distance network facilities, services, and related systems and where it devoted its resources to develop and grow the business. This information would aid competitors in developing their own business strategies to compete with Verizon. Disclosure of Verizon's cost data would put Verizon

at a disadvantage because it lacks similar information about its competitors. The fact that Verizon's competitors treat this information as highly confidential demonstrates the competitive harm that Verizon would suffer if this information were made public.

**(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure, and**

**(7) Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.**

This information is kept confidential within Verizon and is not ordinarily disclosed to persons outside the company. This information is restricted within the company to persons with a need to know. Company practices instruct employees not to disclose this information unless required to do so by competent authority. When such information is disclosed in regulatory proceedings voluntarily or by order of the commission, it is accompanied by requests for confidential treatment.

**(8) Justification of the period during which the submitting party asserts that material should not be available for public disclosure.**

The material must be kept confidential for an indefinite period. Confidential treatment must be accorded for as long as the information would provide a basis for competitors to assess the financial condition and Verizon's future plans for developing long distance services. Verizon cannot determine at this time any date by which the information would become "stale" for these purposes.

**(9) Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.**

Under applicable Commission and court rulings, this material should be kept confidential and should not be disclosed to the public. Exemption 4 of the Freedom of Information Act shields information from public disclosure that is (1) commercial or financial in nature; (2) obtained from a person outside the government; and (3) privileged or confidential. *See Washington Post Co. v. U.S. Department of Health and Human Services*, 690 F.2d 252 (D.C. Cir. 1982). The attached information clearly meets the first two elements of that test. With respect to the third element of the above test, the Court found in *National Parks and Conservation Ass'n v. Morton*, 498 F. 2d 765, 770 (D.C. Cir. 1974) that information is considered "confidential" if disclosure is likely to (1) impair the government's ability to obtain necessary information in the future, or (2) disclosure is likely to harm substantially the competitive position of the person from whom the information was obtained.

The Commission has recognized that competitive harm can result from the disclosure of confidential business information that gives competitors insight into a

company's costs, pricing plans, market strategies, and customer identities. *See, e.g., Pan American Satellite Corp.*, 4 FCC Rcd 4586 (1989).

### **Protective Order Requested**

If the Commission does not exempt these data from disclosure, it should permit disclosure of the confidential information to persons, other than a Commission employee working directly on the matter, only if those persons sign the Commission's standard protective agreement. In addition, please provide me sufficient advance notice prior to any public disclosure to allow Verizon to pursue appropriate remedies to preserve the confidentiality of the information.

Sincerely



Joseph DiBella

Attachments

**ATTACHMENT**  
SUBMITTED SUBJECT TO  
CONFIDENTIALITY REQUEST